right to require an indemnity bond, and class discrimination. *Greene* v. *San Antonio* (Tex. Civ. App. 1915) 178 S. W. 6; *Ex parte Sullivan* (Tex. Cr. App. 1915) 178 S. W. 537; and *Ex parte Cardinal* (Cal. 1915) 150 Pac. 348.

It is fundamental in the discussion of the objections to the enforcement of the ordinances in question, to remember that the "jitney" was by the consideration of the courts or by the admissions of counsel, a common carrier. Having determined the public character of the "jitney" the rule of *Munn* v. *Illinois,* 94 U. S. 113 applies, "When private property is devoted to public use it is subject to public regulation." In all three cases the specifications relating to experience and ability of the driver, the filing of the route, and the license fee charged, were upheld as reasonable measures taken to protect the public. The objection that the charge was an occupation tax received consideration in the Texas cases. It was held that the charge was a license fee remunerative for actual expenses of regulation and inspection, and therefore proper. In the *Sullivan* case the right to require an indemnity bond was denied in the dissenting opinion, and the stipulation of an insurance company unreasonable. The basis for the first objection lay in the contention, "a city cannot require bonds inuring to or operating only between third parties." This received answer in the *Cardinal* case wherein it was stated that, "a bond may be required as a subsidiary measure by way of police control, whenever a license is required by way of regulation, or to serve as an indemnity bond for persons injured." In all three cases this power in the city was declared. As to the requirement of an insurance company instead of a personal surety, the majority opinions in the *Sullivan* and *Cardinal* cases permitted the stipulation as a matter within the legislative authority of the city council, having in mind the public protection. The classification of carriers other than steam or interurban lines into: first, street cars; second, ordinary hacks and automobiles; and third, "jitneys" was held to be a reasonable one in the *Sullivan* case; and in the *Cardinal* case a classification based on the rate of fare charged was held not to be unreasonable. In the *Sullivan* case the court in the prevailing opinion regarded as speculative any inquiry as to the legality of the license fee graded according to the carrying capacity of the "jitney." The dissenting judge declared that the graded fee based solely on the number of passengers carried by the "jitney" was not in its nature a charge for inspection and regulation such as could be properly included in a license fee, but was instead a tax, pure and simple.

NEGLIGENCE—LIABILITY OF MANUFACTURER OF DEFECTIVE ARTICLE. — The plaintiff bought a plug of tobacco, the product of defendant company, from a retailer. The plug contained a large black bug that was not visible but which caused the plaintiff injuries by reason of his chewing the plug of tobacco. The plaintiff contended that the bug had been negligently manufactured in the plug by defendant company. The court *held* that the defendant was not liable to the plaintiff because there was (1), no privity of contract between the parties and, (2), no particular relation carrying with it special duties or a special degree of care in such case. *Liggett & Myers Tobacco Co.* v. *Cannon* (Tenn. 1915), 178 S. W. 1009.

The general rule is that a contractor, manufacturer or vendor is not liable to third parties who have no contractual relations with him, for negligence in the construction, manufacture or sale of the articles he handles. *Huset* v. *J. V. Case Threshing Machine Co.*, 120 Fed. 865; *Winterbottom* v. *Wright*, 10 M. & W. 109; *McCaffrey* v. *Mossberg & Granville Mfg. Co.*, 23 R. I. 358, 55 L. R. A. 822; *Cadillac Motor Car Co.* v. *Johnson*, 221 Fed. 801; Contra—*E. J. Shubert* v. *J. R. Clark Co.*, 49 Minn. 331, 15 L. R. A. 818. But there are three exceptions to this general rule, namely: (1), where the thing causing the injury is of a noxious or dangerous kind; such cases where one who deals with an eminently dangerous article owes a public duty to all to whom it may come and whose lives may be endangered thereby, to exercise caution adequate to the peril involved. *Thomas* v. *Winchester*, 6 N. Y. 397; *Wellington* v. *Downer Kerosine Oil Co.*, 104 Mass. 64; *Morton* v. *Sewall*, 106 Mass 143. (2), where the defendant has been guilty of fraud or deceit in passing off the thing. *Levy* v. *Langridge*, 4 M. & W. 337; *Huset* v. *J. V. Case Co.*, supra; *Lewis* v. *Terry*, 111 Cal. 39, 31 L. R. A. 220. (3), an owner's act of negligence which causes injury to one who is invited by him to use his defective appliance upon the owner's premises may form a basis of an action against the owner. *Caughtry* v. *Globe Woolen Co.*, 56 N. Y. 124; *Roddy* v. *Railroad Co.*, 104 Mo. 234; also see 8 MICH. L. REV. 164; and 11 MICH. L. REV. 490. There are two recent decisions in New York which are opposite in view but the latter of which does not overrule the former. In *MacPherson* v. *Buick Motor Car Co.*, 145 N. Y. Supp. 462, 160 App. Div. 55, the court allowed the recovery by the plaintiff for injuries sustained by reason of a defect in the wheels of a car sold to him by the defendant, although the wheels were not manufactured by the defendant. The case of *Cadillac Motor Car Co.* v. *Johnson*, supra, decided two years later, holds just the opposite on the same statement of facts. The court said the case comes under the general rule and totally disregards the decision in *MacPherson* v. *Buick Motor Co.*, supra, in reaching its decision. Judge Coxe dissented on the ground that if the defendant was not liable to the plaintiff it was obvious that the plaintiff was without relief for the injuries sustained.

PARTITION—EFFECT OF JUDGMENT IN PARTITION SUIT.—A large tract of land was partitioned in 1815, plaintiff's assignors receiving lots 1 and 4 and defendant's assignor receiving lot 12. Plaintiff seeks to recover lots 1 and 4 from defendant, and relies upon the theory that his title can not be denied by defendant because of the implied warranty arising from the partition and the estoppel arising from the partition judgment. *Held*, that the implied warranty did not prevail between grantees of the tenants and that the judgment did not create an estoppel as title was not in issue. *Weston* v. *John L. Roper Lumber Co.* (N. C. 1915), 86 S. E. 363.

The doctrine of implied warranty in case of partition arose from the remedy allowed a coparcener at common law as a method of securing recompense for a loss arising after a compulsory partition. If one of the coparceners aliened in fee, the right to vouch on the warranty was lost though the other coparceners could enforce it against the alienee. By statute, 31